In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1876

WILLIE BREWINGTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that narcotics seized in plain view in the basement of his apartment following his arrest in the apartment should have been suppressed.

Following a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on two counts of possession of heroin and cocaine, in violation of 21 U.S.C. 812, 841(a) and 841(b)(1)(A). He was sentenced to two concurrent terms of ten years' imprisonment.

The court of appeals affirmed without opinion (Pet. App.).

The evidence showed that on the morning of March 23, 1973, Special Agent Francis White and five other agents of the Bureau of Narcotics and Dangerous Drugs arrived at petitioner's apartment to execute a warrant for his arrest. Petitioner, dressed in his underwear, was arrested in the doorway of his apartment after he had opened the door in response to the agents' knock. While petitioner was being placed under arrest, White and two other agents ran into the apartment to secure it. A short distance into the apartment, White saw a stairway descending into a basement from which he heard the sound of voices. The agents went to the basement where they found that the voices were coming from a radio. In the basement the agents also observed, on a table next to the wall, an open suitcase which contained a half kilogram of heroin, three-quarters of a kilogram of cocaine, paraphernalia for diluting the drugs and a fully loaded pistol.[1] (A. 30-34, 66-68; Tr. 24-30, 68-69.)[2]

After a "field test" verified that the suitcase contained narcotics, agents were dispatched to obtain a search warrant for the balance of the basement and

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[1] Petitioner had a prior weapons conviction, which was known to the arresting officers (A. 61).

[2] "A." refers to the appendix in the Court of Appeals, which reproduces the transcript of the hearing on petitioner's suppression motion. "Tr." refers to the reporter's transcript of proceedings at trial.

the apartment (A. 34-36; Tr. 30-31, 68-70). A search pursuant to that warrant disclosed a kilogram of heroin in an immobilized dumbwaiter located in the wall at the top of the basement stairs and $18,000 in a bedroom in the apartment (A. 37-39, 43-44; Tr. 34-35, 71-73).

Petitioner's sole contention is that the narcotics found in plain view in the basement and the narcotics seized pursuant to the search warrant, probable cause for which was based in part on the narcotics found in the basement, should have been suppressed. Petitioner's motion to suppress the narcotics was denied by the district court following a pretrial hearing and the court of appeals affirmed that ruling. This contention does not warrant further review.

When the agents entered petitioner's apartment and placed him under arrest, knowing of his weapons conviction, they were entitled to make a cursory examination of the premises to ascertain that no one else was present who might threaten their safety, particularly since petitioner was undressed and could not be removed immediately from the apartment. *United States* v. *Christophe*, 470 F. 2d 865, 869 (C.A. 2), certiorari denied *sub nom. Pierro* v. *United States*, 411 U.S. 964; *United States* v. *Briddle*, 436 F. 2d 4, 7-8 (C.A. 8), certiorari denied, 401 U.S. 921. The agents' right to make a cursory examination of the apartment for other persons included the right to look in a basement from which there was unimpeded access to the apartment, especially since

the sounds coming from the stairwell implied that someone was in the basement.[3]

Having legally entered the basement to perform a cursory security examination, the agents were entitled, indeed obliged, to seize the narcotics, paraphernalia, and pistol, which were in plain view. See *Coolidge* v. *New Hampshire*, 403 U.S. 443; *Harris* v. *United States*, 390 U.S. 234, 236.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1974.

[3] Petitioner's reliance on *Chimel* v. *California*, 395 U.S. 752, is misplaced since the cursory examination conducted here for the agent's protection is not the type of thorough, systematic search condemned in *Chimel*.

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